IN THE HIGH COURT OF BOMBAY AT GOA, PANAJI

CIVIL REVISION APPLICATION NO.22 OF 2002

1. Shri Fermino Coutinho,
   landlord, resident of
   Sinquitim, Navelim,
   Salcete-Goa.

2. Shri Carlos Jose C.
   Coutinho;

3. Shri Carmino Piedade
   M.Coutinho;

4. Shri Conceicao Joaquim
   S.N.Coutinho,
   All residents of Sinquitim,
   Navelim, Salcete-Goa. ... Petitioners.

versus

1. Shri Antonio Menino Jose
   Da Silva; and his wife,

2. Smt. Edbiscaia Irene
   Teodora Rodrigues e Da
   Silva,
   Both residents of House
   No.81, Sirvodem, Navelim,
   Salcete-Goa. ... Respondents.

Mr. M. S. Sonak, Advocate for the Petitioners.

Mr. M.S. Usgaonkar, Senior Advocate with Mr.Sanjay Sardessai, Advocate for the Respondents.

CORAM: P. V. HARDAS, J.

DATED: 28TH MARCH. 2002.

ORAL JUDGEMENT

By consent of the parties, this Civil Revision Application is taken up for Final Hearing.

2. This Civil Revision Application arises against the Order passed by the Civil Judge, Junior Division, Margao, below Exhibit 64, dated 13th December,2001. By virtue of this Order, the learned Trial Court had granted

permission to the Plaintiffs to examine a witness after the case was fixed for final arguments. The aforesaid application which was filed under Order 18, Rule 2(4) of the Code of Civil Procedure r/w Section 151 of the Code of Civil Procedure was allowed. The learned Trial Court has given reasons for granting permission to the Plaintiffs to examine the witness to prove the sketch(plan) which was already on record and was marked as Exh."X". The reasons given by the learned Trial Court for allowing the aforesaid application is that since the document was already on record and as opportunity is available to the Defendants to cross-examine the witness and also as the Defendants can lead evidence in rebuttal, no prejudice will be caused to the Plaintiffs if the witness is examined. The learned Trial Court was also of the view that to prove the sketch(plan) the expert is being examined and the testimony of the expert would not go beyond the documents. For the aforesaid reasons, the learned Trial Court granted permission to the Plaintiffs to examine the witnesss. The Defendants being aggrieved by the aforesaid Order have filed the present revision in this Court.

3. Mr. M. S. Sonak, the learned Advocate appearing for the Petitioners has vehemently urged before me that the learned Trial Court has given a wide scope to Order 18, Rule 2(4) of the Code of Civil Procedure.

According to him, the learned Trial Court ought not to have exercised the jurisdiction under Order 18, Rule 2(4) of the Code of Civil Procedure as this was a deficiency which had arisen in the evidence of the Plaintiffs and was sought to be cured by the evidence of the aforesaid witness. According to him, therefore, the learned Trial Court has acted with material irregularity in exercising its jurisdiction.

4. I have heard Mr. M. S. Usgaonkar, the learned Senior Advocate appearing for the Respondents. The learned Senior Advocate has supported the findings of the learned Trial Court and has urged before me that the learned Trial Court has given reasons for allowing the revision filed by the Plaintiffs and there is no irregularity. The interests of the Petitioners/Defendants have been adequately protected by the learned Trial Court and no prejudice is caused to the Plaintiffs.

5. I have perused the Order of the learned Trial Court passed below Exh.64. On perusal, I find that the learned Trial Court has given cogent reasons for allowing the revision and has also safeguarded the interests of the Defendants. No prejudice will be caused due to the examination of the aforesaid witness. Anyway, there does not appear to be any irregularity in the exercise of the

discretion by the learned Trial Court and I see no reasons for interfering with the Order passed by the learned Trial Court.

6. Civil Revision Application No.22/2002 is, therefore, devoid of any merits and is dismissed with no order as to costs.

(P. V. HARDAS)
JUDGE